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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/811,420	03/26/2004	BuSang Liu	10112.004001	2642
Jonathan P. Osha OSHA NOVAK & MAY L.L.P. Suite 2800 1221 McKinney St. Houston, TX 77010				
EXAMINER VAKILL, ZOHREH				
ART UNIT 1614		PAPER NUMBER		
MAIL DATE 02/05/2009		DELIVERY MODE PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action  
Before the Filing of an Appeal Brief**

<b>Application No.</b> 10/811,420	<b>Applicant(s)</b> LIU ET AL.
<b>Examiner</b> ZOHREH VAKILI	<b>Art Unit</b> 1614

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 30 December 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1-9.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

/Ardin Marschel/  
Supervisory Patent Examiner, Art Unit 1614

Continuation of 11. does NOT place the application in condition for allowance because: Continuation of 11. does NOT place the application in condition for allowance because: The amendment will be entered into the record because no new matter is raised. Applicant's remarks are not persuasive. Applicant's remarks are fully considered but are not persuasive for the reasons previously made of record in the final rejection (see pages 3-9). Additionally, Applicant is arguing the validity of patent, Murad Patent No. 5962517. Examiner will not comment on an issued patent. Applicant argues that Murad (Pat. No. '163) does not teach a composition substantially free of vitamin A nor teaches a composition comprising carotene. Examiner does not agree with the argument. Murad (Pat. No. '163) teaches a composition that contains a source of Vitamin A which is derived from beta-carotene. Thus the composition of Murad does contain beta-carotene. Applicant's attention is directed to col. 1, lines 44-48. Further more, Murad in Pat No. 5962517 teaches beta-carotene is present in the composition in about 0.1 to 10 weight percent (see col. 4, lines 56-65). Further Applicant claims that the composition is substantially free of Vitamin A or Vitamin A acid. However, if a composition contains carotene this composition is not substantially free of Vitamin A or its derivatives, because carotene is a precursor of Vitamin A, therefore, the composition is not substantially free of Vitamin A or its derivatives. Applicant further discusses that the instant claims are topical compositions to be used on the skins and they will not encounter the necessary enzymes to convert carotene into vitamin A. Applicant's attention is drawn to Murad (Pat. No. 6630163 B1 ) which teaches a topical formulation which contains Vitamin A (beta-carotene). Applicant also discusses each reference separately and not combined with each other. Applicant is reminded that the obviousness rejection is not an anticipation rejection. All references should be considered in combination with each other. Therefore, Applicant's arguments are not found persuasive. Further, all mentioned references meet the instant claims and the claims remain rejected over the prior arts. Applicant's remarks related to the obviation of the rejection by such arguments, and remarks, are not persuasive. For the reasons above claims 1-9 remain rejected and for the reasons of record set forth in the final rejection of October 30, 2008.

/Ardin Marschel/  
Supervisory Patent Examiner, Art Unit 1614